

UNITED STATES DISTRICT COURT  
FOR THE DISTRICT OF MASSACHUSETTS

IN RE PHARMACEUTICAL INDUSTRY  
AVERAGE WHOLESale PRICE  
LITIGATION

MDL No. 1456

CIVIL ACTION: 01-CV-12257-PBS

Judge Patti B. Saris

THIS DOCUMENT RELATES TO:

*State of Montana v. Abbott Labs., Inc., et al.,*  
D. Mont. Cause No. CV-02-09-H-DWM

*State of Nevada v. American Home Products*  
*Corp., et al.,*  
D. Nev. Cause No. CV-N-02-0202-ECR

**PLAINTIFF STATES OF MONTANA AND NEVADA'S RESPONSE TO**  
**DEFENDANTS' MOTION FOR CLARIFICATION OF CMO 10**

Defendants request for clarification is not opposed by Montana and Nevada ("States") to the extent it applies to defendants not jointly named in the Montana/Nevada complaints and the AMCC for the reasons explained below.

Moving defendants actually comprise to different groups. There are defendants such as Abbott, Baxter, Bristol-Myers and others who are common to the AMCC and the Montana/Nevada complaints. These defendants urged the Court to adopt an order that would require coordination of the State cases with the proceedings going forward with respect to the AMCC. And the Court entered such an order. CMO No. 9 at pp. 3-5 (attached as Exhibit A). It would be inconsistent with these defendants' request for coordination to now order that the States' discovery schedule should be different. As authority for their new position on coordination, defendants point to the fact that the Court has not ruled on the motions to dismiss

the States' cases. However the Court in the AMCC has upheld consumer protection claims against the AMCC defendants and there is no reason to suggest the States' consumer protection claims would be dismissed. Therefore, in the interests of coordination, as to the joint AMCC/State defendants, CMO 10 should apply.

However, the States do recognize that certain defendants are not defendants in the AMCC or in the State cases, and that these defendants have raised issues regarding the adequacy of the County's pleadings with respect to these defendants and the Court has itself expressed concerns in this regard. The States take no position as to the applicability of CMO 10 to these county only defendants.<sup>1</sup>

By /s/ Signature on file with the Court

DATED: April 1, 2004.

Steve W. Berman  
Sean R. Matt  
HAGENS BERMAN LLP  
1301 Fifth Avenue, Suite 2900  
Seattle, WA 98101  
Telephone: (206) 623-7292  
Facsimile: (206) 623-0594

Thomas M. Sobol  
HAGENS BERMAN LLP  
225 Franklin Street, 26th Floor  
Boston, MA 02110  
Telephone: (617) 482-3700  
Facsimile: (617) 482-3003

COUNSEL FOR PLAINTIFFS  
STATE OF MONTANA AND  
STATE OF NEVADA

Brian Sandoval  
Attorney General of the State of Nevada  
L. Timothy Terry  
Assistant Attorney General  
100 N. Carson Street

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<sup>1</sup> These defendants include what counsel at oral argument referred to as the "thirteen who want out."

Carson City, Nevada 89701-4714

ADDITIONAL COUNSEL FOR PLAINTIFF  
STATE OF NEVADA

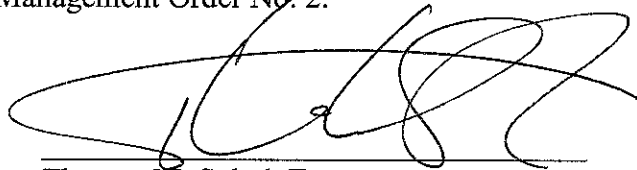
Mike McGrath  
Attorney General of Montana  
Kathy Seeley  
Assistant Attorney General  
Justice Building  
215 North Sanders  
P.O. Box 201401  
Helena, MT 56920-1402  
(406) 444-2026

Joseph P. Mazurek  
CROWLEY, HAUGHEY, HANSON,  
TOOLE & DIETRICH PLLP  
100 North Park Avenue, Suite 300  
P.O. Box 797  
Helena, MT 59601-6263  
(406) 449-4165

ADDITIONAL COUNSEL FOR PLAINTIFF  
STATE OF MONTANA

**CERTIFICATE OF SERVICE**

I hereby certify that I, Thomas M. Sobol, an attorney, caused a true and correct copy of the foregoing Plaintiff States of Montana and Nevada's Response to Defendants' Motion for Clarification of CMO 10 to be served on all counsel of record electronically on April 01, 2004, pursuant to Section D of Case Management Order No. 2.



Thomas M. Sobol, Esq.  
**HAGENS BERMAN LLP**  
225 Franklin Street, 26<sup>th</sup> Floor  
Boston, MA 02110  
Telephone: (617) 482-3700